



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Igor Rakovchik, D.O.

Respondent Name

Truck Insurance Exchange

MFDR Tracking Number

M4-17-1223-01

Carrier's Austin Representative

Box Number 14

MFDR Date Received

January 3, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Designated Doctor Referred Testing is NOT subject to PPO or network reductions."

Amount in Dispute: \$948.88

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: Submitted documentation does not include a position statement from the respondent. Accordingly, this decision is based on the information available at the time of review.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
July 5, 2016	Evaluation & Management, new patient (99204)	\$263.13	\$0.00
July 5, 2016	Needle electromyography, each extremity (95886)	\$294.32	\$0.00
July 5, 2016	Nerve conduction studies; 9-10 studies (95911)	\$374.53	\$0.00
July 5, 2016	Electrodes, per pair (A4556)	\$16.90	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 sets out the procedures for resolving medical disputes.
2. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
3. 28 Texas Administrative Code §127.10 sets out the procedures for designated doctors.
4. Texas Insurance Code, Chapter 1305 is the regulatory authority for Health Care Certified Networks.
5. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 196 – Non Network Provider
 - B5 – Pymnt Adj/Program guidelines not met or exceeded

- 234 – This procedure is not paid separately.
- RG4 – Service is incidental per Medicare Guidelines

Issues

1. Did Truck Insurance Exchange respond to the medical fee dispute?
2. Is Truck Insurance Exchange's prohibited from raising a 1305 network defense?
3. Did the requestor obtain out-of-network approval from the network in accordance with Section 1305.103?
4. Is this dispute eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307?

Findings

1. The Austin carrier representative for Truck Insurance Exchange is Farmers Insurance Group. Farmers Insurance Group acknowledged receipt of the copy of this medical fee dispute on January 10, 2017.

28 Texas Administrative Code §133.307 states, in relevant part:

- (d) Responses. Responses to a request for MFDR shall be legible and submitted to the division and to the requestor in the form and manner prescribed by the division.
- (1) Timeliness. The response will be deemed timely if received by the division via mail service, personal delivery, or facsimile **within 14 calendar days after the date the respondent received the copy of the requestor's dispute** [emphasis added]. If the division does not receive the response information within 14 calendar days of the dispute notification, then the division may base its decision on the available information.

Review of the documentation finds that no response has been received on behalf of Truck Insurance Exchange from Farmers Insurance Group to date. The division concludes that Truck Insurance Exchange failed to respond within the timeframe required by §133.307(d)(1). For that reason the division will base its decision on the information available.

2. Dr. Rakovchik is seeking reimbursement for an evaluation and management of a new patient, needle electromyography, and nerve conduction studies performed on July 5, 2016 in response to a referral from Designated Doctor Raymond Glass, M.D. Truck Insurance Exchange denied the disputed services with claim adjustment reason codes 196 – “Non Network Provider,” and B5 – “Pymnt Adj/Program guidelines not met or exceeded.”

The authority of the Division of Workers' Compensation to apply Texas Labor Code statutes and rules, including 28 TAC §133.307 for this case, is limited to the conditions outlined in Texas Insurance Code, Chapter 1305.006.

Texas Insurance Code Section 1305.006 states, in pertinent part:

- An insurance carrier that establishes or contracts with a network is liable for the following out-of-network health care that is provided to an injured employee: ...
- (3) health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network pursuant to Section 1305.103.”

While the term “health care” is not defined in Texas Insurance Code Section 1305, Section 153(c) adopts the Texas Workers' Compensation Act by reference. This term is defined in Texas Labor Code 401.011(19), stating:

"Health care" includes all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation...

Under this definition, the FCE in question is determined to be health care, as it is used in Texas Insurance Code Section 1305.

The requestor argued against the denial of the services in question, stating that “this is a DD requested FCE.” 28 Texas Administrative Code §127.10(c) provides, in relevant part:

... The designated doctor shall also refer an injured employee to other health care providers when the referral is necessary to resolve the issue in question and the designated doctor is not qualified to fully resolve the issue in question. Any additional testing or referral required for the evaluation is **not subject to preauthorization requirements nor shall those services be denied retrospectively based on medical necessity, extent of injury, or compensability** [emphasis added] in accordance with the Labor Code §408.027 and §413.014, Insurance Code Chapter 1305, or Chapters 10, 19, 133, or 134 of this title...

The division notes that the previous version of this rule, effective December 17, 2010, provided exclusions for denials only based on preauthorization and retrospective review for medical necessity. The current version, effective July 20, 2012 added the additional exclusions, which was explained in preamble as follows:

This amendment is necessary to clarify that though insurance carriers may not deny designated doctor requested testing or examinations for the listed reasons, the bills submitted for these referrals must still comply with Division billing and fee requirements, and insurance carriers may still retrospectively review these bills for those purposes.

The carrier is therefore prohibited from asserting a denial for preauthorization, medical necessity, extent of injury, or compensability; however it is not prohibited from asserting that the provider in this case failed to obtain the proper permission from the Texas Star health care certified network to treat the injured employee. The division concludes that the carrier was not prohibited from denying the service in dispute using the claim adjustment reason codes 196 and B5.

3. It is the requestor’s responsibility to ensure that it has the appropriate authority to perform the services for which it bills. Review of the submitted documentation supports that the injured employee that received the services in dispute was enrolled in the Texas Star network. No evidence was presented to support that Dr. Rakovchik is enrolled in the Texas Star network; therefore, the Dr. Rakovchik was required to obtain an out-of-network referral for the services in question, in accordance with Texas Insurance Code §1305.103(e).

Texas Insurance Code §1305.103(e) states that it is part of the treating doctor’s responsibilities is to make referrals. Because the authority of the designated doctor is embedded in the Labor Code, and there is no conflict found for the authority of the designated doctor to make referrals, the insurance carrier may approve out-of-network referral requests from the designated doctor as well. No out-of-network approval was found with the submitted documentation. The Division concludes that the requestor has failed to meet the requirements of Texas Insurance Code Section 1305.103.

4. The Division finds that Dr. Rakovchik failed to prove in this case that the requirements of Texas Insurance Code Section 1305.006(3) were met. Consequently, the services in dispute are not eligible for medical fee dispute resolution. The appropriate process for dispute resolution in network claims may be found in Texas Insurance Code Section 1305, Subchapter I.

Decision

The outcome of this medical fee dispute relied upon the evidence presented by the requestor and the respondent at the time of adjudication. Even though all the evidence was not discussed, it was considered. Based upon the documentation submitted by the parties, the Division has determined that this dispute is not eligible for resolution pursuant to 28 Texas Administrative Code §133.307.

Authorized Signature

	Laurie Garnes	May 5, 2017
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.